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April 9, 2007

VIA FACSIMILE AND OVERNIGHT DELIVERY

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 Texas Commission on Environmental Quality
 Building F
 12100 Park 35 Circle
 Austin, Texas 78753

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Re: Application of the City of Weston for Permit No. WQ0014602001; SOAH Docket No. 582-06-2770; TCEQ Docket No. 2006-0199-MWD

Dear Sir or Madam:

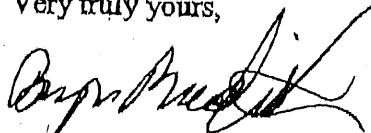
Enclosed for filing in the above-referenced matter, please find the City of Weston's Exceptions to the Proposal for Decision. The original and eleven copies are being sent to you by overnight delivery. All persons on the service list and the Administrative Law Judge have also been a sent copy of this document.

In addition, please revise the mailing list to add Mr. Bryn Meredith as co-counsel of record along with me. All future correspondence should be directed to both me and Mr. Meredith at the following address:

Taylor Olson Adkins Sralla Elam, L.L.P.
 6000 Western Place, Suite 200
 Fort Worth, Texas 76107
 Fax: (817) 332-4740

I may contacted by telephone at (214) 417-5420. Thank you very much for your assistance.

Very truly yours,



Bryn Meredith for
 Angela M. Stepherson

Enclosure

cc: Mailing List

SOAH DOCKET NO. 582-06-2770
TCEQ DOCKET NO. 2006-0199-MWD

APPLICATION OF THE CITY OF
WESTON FOR PERMIT NO.
WQ0014602001

§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 APR 10 PM 2:56
CHIEF CLERK'S OFFICE

**CITY OF WESTON'S EXCEPTIONS
TO THE PROPOSAL FOR DECISION**

The City of Weston ("Weston") files these exceptions to the Administrative Law Judge's Proposal for Decision ("PFD") in the above-referenced proceeding. For the reasons set out below, Weston urges the Texas Commission on Environmental Quality ("Commission" or "TCEQ") to find that Weston has met its burden of proof with respect to each of the five issues referred for hearing and issue Permit No. WQ0014602001 as prepared by the TCEQ Executive Director, with certain changes discussed herein and with the expiration date revised to reflect a five-year term from the actual issuance date.

I.

THE FACILITY WILL BE PROTECTED FROM A 100-YEAR FLOOD

The analysis in the PFD is not based on the TCEQ's requirements and gives inappropriate weight to vague, lay testimony presented by the protestants but virtually ignores the uncontroverted expert evidence presented by Weston regarding the established 100-year floodplain. As discussed below, Weston has met its burden of proof with respect to the specific issue referred for consideration in the hearing. Nevertheless, as also discussed below, the concerns set out in the PFD can be addressed with minor changes to the draft permit recommended by the Executive Director.

The Commission referred the following issue for consideration in the contested case hearing:

Whether the proposed facility is located in the 100-year floodplain, and if so, *whether the draft permit contains adequate provisions* to protect the facility from inundation by such a flood event.

(Emphasis added). The generally applicable TCEQ rule is established in section 309(13)(a), 30 Texas Administrative Code, which does not prohibit the location of a wastewater treatment facility in the 100-year floodplain. Rather, that rule provides only that a “*wastewater treatment plant unit* may not be located in the 100-year floodplain unless the plant unit is protected from inundation and damage that may occur during that flood event.” (Emphasis added.)¹ Section 309.11(9) of the TCEQ rules defines a wastewater treatment plant unit as

[a]ny apparatus necessary for the purpose of providing treatment of wastewater (i.e., aeration basins, splitter boxes, bar screens, sludge drying beds, clarifiers, overland flow sites, treatment ponds or basins that contain wastewater, etc.)

The PFD cites the definitions of “existing facility” and “new facility” in sections 309.11(4) and (5) of the TCEQ rules, but fails to note that those defined terms are used only in section 309.12, which has no bearing on the floodplain issue. *See* PFD at 29. As discussed below, section 317.1 of the TCEQ rules establishes the specific process for determining whether a facility will be protected from a 100-year flood.

Weston presented completely uncontroverted expert evidence showing that the proposed wastewater treatment plant will not be located in the established 100-year floodplain. Weston’s engineer, Michael A. James, P.E.,² testified that as part of his preparation of Weston’s Domestic Wastewater Permit Application (the “Application”), he researched whether the treatment plant

¹ In fact, one of Weston’s expert witnesses, Donald E. Paschal, Jr., testified that wastewater treatment plants are commonly located as close as possible to the floodplain. Hearing Transcript at 644.

² Mr. James is a licensed professional engineer with extensive experience in designing and permitting wastewater treatment facilities. *See* Exh. Applicant-26 at 1-5.

would be located within the 100-year floodplain, and he determined that it would not be. Exh. Applicant-26 at 9. In making that determination, he relied on the applicable Flood Insurance Rate Map prepared by the Federal Emergency Management Agency ("FEMA"), which is the source of information commonly relied on by professionals to determine the location of the 100-year floodplain. *Id.* In fact, Lawrence Ringley, a registered professional land surveyor, confirmed in his testimony for the protestants that most professionals use the FEMA maps as their *only* source of information for determining the location of the 100-year floodplain. Hearing Transcript at 475, lines 12-13; *see also id.* at 478, lines 14-17; 523, lines 11-14. As shown on the Buffer Zone Map included in the Application and also on Exhibit Applicant-20, the wastewater treatment plant will not be located in the 100-year floodplain as designated by FEMA.

As the PFD states, Weston acknowledges that some of the effluent storage ponds will be located partially within the 100-year floodplain. The PFD concludes that the storage ponds are treatment units solely because Special Provision No. 12 in the draft permit requires that the already treated effluent be re-chlorinated if stored prior to irrigation. PFD at 29. Contrary to the suggestion in the PFD, "wastewater" will not be stored in these ponds. Rather, they will be used for the storage of effluent that has already been fully treated in accordance with the terms of the draft permit. In any case, the TCEQ rules do not prohibit effluent storage ponds from being located in the 100-year floodplain.

The protestants presented absolutely no expert testimony or evidence regarding either the 100-year floodplain issue or the other four issues referred for consideration in the hearing. With respect to the floodplain issue, the protestants' witnesses provided only anecdotal testimony regarding their observations, as lay persons, regarding what they considered to be past flood events in various parts of Collin County. Although it may not be clear from the description of

this testimony in the PFD, much of that testimony concerned alleged flooding in areas that are not even near Weston's proposed treatment and irrigation facilities. *See, e.g.*, Hearing Transcript at 291, lines 9-15; 306, lines 8-13; 308, lines 2-10; 318, lines 23-24; 358, lines 14-18. Furthermore, the latest flood event described by any of the protestants' witnesses occurred *seventeen years ago*, in 1990. *See id.* at 341, line 15; 348, lines 1-4; 474, lines 17-18; 535, line 19; 574, lines 10-15. As shown on Exhibit Protestant-12, the most recent FEMA floodplain map for this area was revised in 1996, subsequent to all of the flood events described by the protestants' witnesses. Also, as Michael Gidney and Nina Ringley testified, County Road 170 near the proposed wastewater treatment plant site has been raised and a new bridge built in just the last few years. Hearing Transcript at 348, line 20 through 349, line 24; 587, line 22 through 588, line 17. Those improvements alleviate the flooding that might have previously occurred in that area.

Even though not a single protestant witness was qualified to provide expert testimony on the specific issue of whether the facility will be located in the 100-year floodplain, the PFD inappropriately treats various lay opinions offered by those witnesses as if they were expert opinions. *See* PFD at 18-26. As discussed below, the proposed order even uses several of those unfounded lay opinions as the basis for findings of fact.

In any event, the draft permit recommended by the TCEQ Executive Director is already written as if both the wastewater treatment plant and the related storage ponds will be located in the 100-year floodplain and requires those facilities to be protected from inundation by such a flood event. With respect to the treatment plant, Special Provision No. 22 requires Weston to "provide facilities for the protection of its wastewater treatment facilities from a 100-year flood."

Exh. Applicant-16 at 25.³ Special Provision 19 of the draft permit further requires all of the storage ponds to be protected from a 100-year flood:

The three golf course effluent storage ponds and wastewater treatment plant storage pond shall be bermed or have other protective measures to prevent inundation and damage that may occur during a flood event in accordance with 30 TAC §309.13(a).

Id.

The PFD nevertheless concludes that these provisions are inadequate because they “do not describe how the facility will be protected with any clarity or specificity” and recommends that Weston’s permit application be denied because

[w]ithout more specificity as to how these flood-protection goals will be accomplished, the ALJ cannot conclude that there are adequate provisions to protect the facility from inundation by a 100-year flood event.

PFD at 30. The PFD also criticizes Special Provision No. 8 in the draft permit because it only requires Weston to submit detailed plans and specifications prior to constructing the treatment facilities if requested by the TCEQ staff after reviewing a summary submittal letter. *Id.* This provision as written, however, reflects the requirements of the TCEQ rules as set out in section 317.1.

The Application and the draft permit do not contain the specific design information discussed in the PFD because the TCEQ does not require construction plans to be submitted as part of a wastewater permit application, and such plans were never requested as part of the review of Weston’s Application. Weston submitted the information required by the TCEQ’s permit application form, and that information was determined by the agency to be complete. *See* Exhibits Applicant-15 (permit application), Applicant-1 (declaration of administrative

³ In addition, unlike most wastewater treatment plants, Weston’s treatment facility will be located wholly within a protective enclosed structure. Exh. Applicant-26 at 12 (testimony of Michael James).

completeness), Applicant-17 (Technical Summary and Executive Director's Preliminary Decision).

Because detailed design information is not required as part of the permit application, wastewater permits issued by the TCEQ do not contain that information. Rather, the TCEQ requires that information to be submitted after the permit is issued, but prior to the actual construction of the permitted facilities. The process for review of construction plans and specifications is established by section 317.1 of the TCEQ rules. In particular, section 317.1(b)(4)(E)(i) provides that "[p]roposed treatment units which are to be located within the 100-year flood plain will not be approved for *construction* unless protective measures satisfactory to the commission (such as levees or elevation of the treatment units) are included in the project design." (Emphasis added.) In essence, the PFD recommends denial of Weston's Application because it does not contain information that is not required by the TCEQ in any application and because the draft permit does not include detailed design information that would not be included in any permit.

The PFD recommends denying the Application altogether even though a minor revision to the draft permit will address the concerns raised in the PFD and ensure that the facilities as designed and actually constructed will be adequately protected from a 100-year flood event.

Weston requests that Special Provision No. 8 be modified as follows:

Prior to construction of the interim and final phase treatment facilities, the permittee shall submit to the TCEQ Wastewater Permitting Section (MC 148) ~~[a summary submittal letter in accordance with the requirements in 30 TAC Section 317.1. If requested by the Wastewater Permitting Section, the permittee shall submit]~~ plans, specifications and a final engineering design report which comply with 30 TAC Chapter 317, Design Criteria for Sewerage Systems. The permittee shall clearly show how the treatment system will meet the permitted effluent limitations required on Page 2 of the permit and how the wastewater treatment facilities and storage ponds will be protected from a 100-year flood as required by Special Provision Nos. 19 and 22.

With these changes and the uncontroverted evidence in the record, Weston has met its burden of proof with respect to the 100-year floodplain issue, and the Application should be granted.

II.

TREATED EFFLUENT APPLIED FOR IRRIGATION WILL NOT SEEP INTO GROUNDWATER OR SPRING-FED PONDS

Weston again presented conclusive, wholly uncontroverted expert evidence showing that treated wastewater disposed of by irrigation in accordance with the terms of the draft permit will not seep into the water table or ponds. The PFD, however, appears to disregard this and other key evidence, as well as the relevant provisions in the TCEQ rules and draft permit.

The Commission referred the following specific issue for consideration in the hearing:

Will the treated wastewater disposed of by irrigation seep into and adversely impact the shallow water table and the spring-fed ponds in the area, including during periods of heavy rain, freezing weather and ice storms.

The PFD discusses various TCEQ rules relating to ground and surface water, but does not focus on one key rule provision relating to the irrigation with treated effluent that will be authorized under the draft permit. Section 309.20(a)(4)(B) provides that

Groundwater resources serving as sources or potential sources of domestic raw water supply will be protected by limiting wastewater application rates. Effluent storage and/or treatment ponds presenting seepage hazards to these groundwater resources shall be constructed with adequate liners.

(Emphasis added). The TCEQ Executive Director prepared a Groundwater Impact Evaluation and concluded that the permit should be issued, with certain special provisions. See Exh. Applicant-23.

Weston demonstrated with unchallenged expert evidence that treated effluent used for irrigation, under the terms established by the draft permit, will not seep into groundwater or ponds under any weather conditions. First, the draft permit limits the rate of application of

treated effluent used for irrigation, resulting in protection of groundwater as provided by section 309.20(a)(4)(B). Exh. Applicant-16 at 23 (Special Provision No. 6). These application rates are based on water balance calculations performed in compliance with TCEQ requirements. See Exh. Applicant-22 (TCEQ staff analysis of irrigation rates), Exh. Applicant-26 at 12-13 (testimony of Michael James). As Mr. James testified, his analysis took into account precipitation and evaporation data, soil type, and the evapotranspiration rate of the crop to be irrigated. Exh. Applicant-26 at 12. Mr. James further testified that his water balance calculations were extremely conservative, using the "highest precipitation data for the county recorded in the last 50 years" and "the lowest evaporation rates recorded." *Id.* at 13; see 30 Tex. Admin. Code § 309.20(b)(3)(B) (providing that effluent storage requirements must be based on at least 25 years of rainfall data).

Mr. James also used the water balance calculations to determine the amount of storage needed for both treated effluent and storm water. Based on those conservative calculations, the storage facilities have been sized so that storage is "available at all times," even under the "worst case scenario." Exh. Applicant-26 at 12-13; see also Exh. Applicant-19 at 6-7 (discussion of water balance calculations in TCEQ Executive Director's Response to Public Comments). Mr. James provided the only expert testimony in the record regarding this issue and concluded that in his expert opinion, the treated effluent used for irrigation

will not seep into the water table or spring fed ponds because there is adequate storage, of storm water runoff and plant effluent, to allow for effluent application at rates that will be absorbed by the proposed vegetation and used in the natural evapotranspiration process. In other words, the proposed plant life will use all of the effluent applied for irrigation, the remainder will be stored, and none will be left to seep to the water table or off-site, even during periods of heavy rain, freezing weather, or ice storms.

Id. at 15-16.

In addition to the limits on rate of application, the draft permit contains several other provisions that will ensure that the effluent used for irrigation will not impact the water table or spring-fed ponds, including during periods of heavy rain, freezing weather, or ice storms. Special Provision No. 4 specifically requires Weston to design and manage the irrigation "so as to prevent contamination of ground and surface waters Tailwater control facilities shall be provided as necessary to prevent the discharge of any wastewater from the irrigated land." Exh. Applicant-16 at 23. Special Provision No. 17 requires that the storage facilities be lined using one of three methods to prevent seepage. *Id.* at 25. Special Provision No. 5 prohibits irrigation during rainfall or when the ground is frozen or saturated. *Id.* at 23. Finally, as an added protection, the draft permit establishes effluent limitations more stringent than those required by the TCEQ rules. *Compare* 30 Tex. Admin. Code § 309.4, Figure 1 (Set 4, Irrigation (public exposure)) *with* Exhibit Applicant-16 at 2.

The PFD is somewhat contradictory in that the Section VI analysis agrees that Mr. James' water balance calculations were appropriate, discusses the effluent application rates in the draft permit, and concludes that effluent used for irrigation will not even saturate the *soil* in the irrigation area. PFD at 46. In a puzzling contrast, the Section V analysis "finds there are too many groundwater-related issues unresolved to authorize the permit." *Id.* at 40.

First, Weston notes that contrary to the suggestion in the PFD, nothing in the TCEQ rules or application form requires a field "report," although Mr. James did examine the proposed wastewater treatment plant and irrigation sites and prepared the information in the Application based in part on his personal observations. *See* Hearing Transcript at 234; Exh. Applicant-15. In many instances, the TCEQ rules and wastewater permit application form require that information from reliable outside sources, e.g., the U.S. Department of Agriculture and the U.S. Geological

Service, be used in an application. *See, e.g.,* 30 Tex. Admin. Code §§ 309.20(a)(1) (U.S.G.S. maps), 309.20(a)(3) (U.S.D.A. Soil Conservation Service), 309.20(b)(3) (past rainfall records); Exh. Applicant-15 at 6 (U.S.G.S. maps).

The PFD erroneously asserts that

except in a very generalized way, the soil map does not show surface features of Applicant's property. Thus, Applicant has not proven whether there are any groundwater recharge features or any specific geologic conditions or soil conditions on the site.

PFD at 40. The Application contains the information required by the TCEQ rules and the application form in effect at the time the Application was submitted. With respect to soil conditions, the relevant TCEQ rule, section 309.20(a)(3), provides as follows:

Soils. A general survey of soils with regard to standard classifications shall be compiled for all areas of waste application to the soil. Soil surveys compiled by the United States Department of Agriculture Soil Conservation Service shall be utilized where available.

(Emphasis added.) The Application contains the required U.S.D.A. soil information, which was taken into account in the detailed water balance calculations discussed above and found by the PFD to be reasonable. *See* Exh. Applicant-15, Soil Map; Domestic Worksheet 3.1 – Land Disposal of Effluent Domestic Worksheet 3.1 – Land Disposal of Effluent.

With respect to geologic conditions, section 309.20(a)(2) requires an applicant to provide the following information:

The existence of any unusual geological formations such as faults or sink holes on the waste disposal site shall be noted in the technical report and identified on the site map. The conceptual design of the waste disposal system shall include appropriate engineering considerations with respect to limitations presented by these features.

(Emphasis added). Weston's Application used the U.S.G.S. map, as required by the TCEQ application form, and other reliable sources to show the surface water features and applicable geological information. The PFD states that the *soil map* does not show the surface features of the irrigation site, but that information is included elsewhere in the Application and taken into

account along with the geological conditions. See Exh. Applicant-15 at 10 (Question 10); Enclosure (United States Department of the Interior Geological Survey Map, Weston Quadrangle); Site Drawing; Site Map; Geology of Texas.

The PFD next questions whether the "blue line" shown on the Site Map in the Application could be "water connected to a shallow water table or generated by a spring-fed pond." PFD at 40. It is clear, however, from the Site Map itself and the Site Drawing (also included in the Application) that the referenced blue line is a stream from the drainage control pond (labeled on the map as "Existing Cattle Pond") to Honey Creek and thus is not connected to any groundwater or spring-fed pond. The PFD claims that "it is unclear what serves as the source of the water in the cattle pond or flood control lake." *Id.* Because it is a flood control structure, however, it should be apparent that the water in it is storm water. Eleanor McKee testified on behalf of the protestants that the "cattle pond" is actually a U.S. Department of Soil and Water Conservation flood control lake. Hearing Transcript at 412.

Furthermore, the draft permit requires Weston to "maintain a 50-foot buffer from Honey Creek *and its tributaries* where no effluent will be applied." Exh. Applicant-16 at 25, Special Provision No. 20 (emphasis added). Because the "blue line" is a stream and a tributary of Honey Creek, the draft permit does not allow Weston to irrigate with treated effluent within 50 feet of that stream, and it will not be impacted in any event.

The PFD next discusses "water spring features" that are allegedly "in the vicinity of Applicant's property, including along the east side of Honey Creek, and Applicant's property is also on the east side of the creek." PFD at 40. This conclusion appears to be based on the testimony of Nina Ringley on behalf of the protestants. According to the PFD, Ms. Ringley testified that "the underwater natural springs along Honey Creek are close to the bridge and the

area where the proposed facility is to be.” *Id.* at 36. In fact, Ms. Ringley, who testified only as a lay witness, admitted during cross-examination by the Public Interest Counsel that she was just guessing that springs were located in the area described in her earlier direct testimony. *See* Hearing Transcript at 573-74 (stating that she “believe[d]” water near the creek to be springs and “That’s what I feel springs are”). In addition, as described above, the draft permit prohibits the application of effluent for irrigation within 50 feet of Honey Creek. Furthermore, the specific issued referred for hearing by the Commission was whether effluent applied for irrigation would seep into spring-fed ponds, not Honey Creek.

Finally, the PFD faults the Application for not identifying a water well located on the property owned by Mike and Eleanor McKee. As discussed in detail in Weston’s Closing Argument, Weston made every effort to identify all water wells within the distance required by the TCEQ. Even the PFD “does not question Applicant’s good faith in attempting to provide water well information to the Commission.” PFD at 40. As the record clearly shows, and as Ms. McKee herself acknowledged, it would have been impossible for Weston to locate the McKee well given the available information. The state Well Report for that well, which Weston obtained only through discovery in this proceeding, shows the location of the well as 706 N. Bradley Street, McKinney, Texas 75069. Exh. Protestant-20; Hearing Transcript at 432, line 23 through 433, line 1. As Ms. McKee testified, that location is in the City of McKinney proper, at least ten miles away from the McKees’ current residence at 5065 County Road 170. Hearing Transcript at 433, lines 2-12. Ms. McKee also acknowledged that a person attempting to locate wells in the vicinity of Weston’s proposed facility would have had no reason to look at the report for a well shown to be located some distance away in the City of McKinney. *Id.* at 433, line 21 through 434, line 4.

The PFD concedes that "the McKee's [sic] well report may not be helpful to the Commissioner's [sic] in making their decision" and that the well is outside the distance allowed by the TCEQ rules. PFD at 40. In fact, the well is significantly outside that distance. Section 309.13(c)(1) provides that a wastewater treatment plant unit or "land where surface irrigation using wastewater effluent occurs . . . must be located a minimum horizontal distance of 150 feet from a private water well." The record shows that the McKee well is actually 2,500 feet east of the irrigation site. *See* Exh. Protestant-32.

Consequently, as the PFD seems to recognize, even if Weston had somehow been able to locate this well and include it in the Application, it would not have impacted the ultimate outcome of this case, and it certainly would not have resulted in the denial of the Application as recommended by the PFD. In particular, the record clearly shows that the well cannot possibly be affected by irrigation with effluent under the draft permit conditions, which is the only relevant issue in this proceeding. The well is located nearly one-half mile from the border of the proposed irrigation site. Even if irrigation happened to occur at the very edge of the irrigation area, the PFD finds that the soil on the irrigation site itself will not be saturated. It is inconceivable that even though the effluent applied for irrigation did not saturate the soil, it could still somehow leave the irrigation site, travel almost one-half mile east in the opposite direction of the normal drainage flow, and reach the McKees' well.

In sum, Weston has provided all of the information necessary for the TCEQ's consideration of the Application and has in fact demonstrated that wastewater disposed of by irrigation will not seep into the water table or spring-fed ponds under any weather conditions. Therefore, the Application should be granted.

III. CHANGES TO DRAFT ORDER

Based on the evidence in the record, Weston requests that the Commission revise the title of the draft order recommended by the Administrative Law Judge to reflect issuance of the permit and make the changes described below to the order. Attachment A to these Exceptions shows additional Findings of Fact and Conclusions of Law that should be included in the order so that it accurately reflects the record and contains all of the information relevant to the five issues the Commission referred for consideration in the hearing.

A. Findings of Fact

First, proposed Finding of Fact No. 15 should be deleted because the storage ponds will not hold "wastewater"; they will hold effluent that has already been fully treated in accordance with the terms of the draft permit. Proposed Finding of Fact No. 16 does not accurately reflect the terms of the draft permit and therefore should be revised to read as follows:

The draft permit requires Applicant to submit a summary submittal letter in accordance with the requirements in 30 TAC Section 317.1 but requires Applicant to submit detailed plans, specifications, and a final engineering design report only if TCEQ's Wastewater Permitting Section requires one.

Proposed Finding of Fact No. 17 should be deleted for the reasons discussed above and the following finding included in the order: The draft permit requires the facilities as constructed to be designed to protect them from a 100-year flood.

Proposed Finding of Fact Nos. 18 through 29 should be deleted. They are based on anecdotal testimony and inadmissible opinions of unqualified lay witnesses and are irrelevant to the specific issue referred for consideration by the Commission, which is whether the proposed facility will be located in the 100-year floodplain. In addition, proposed Finding of Fact Nos. 21 and 22 are clearly derived from a document that the Administrative Law Judge excluded from the record. *See* Hearing Transcript at 412 (testimony quoting letter from Clyde Hogue verbatim),

414 (Hogue letter offered into evidence as Protestant Exhibit 18), 419 (Administrative Law Judge denied admission of Protestant Exhibit 18). Attachment A to these Exceptions includes the appropriate findings of fact that should be added to the order regarding this issue.

Proposed Finding of Fact No. 32 refers to the McKee well which, as established above, was not included in the Application because of inaccurate location information in the well report. Therefore, Finding of Fact No. 32 should be replaced with the following:

Applicant included in the application all required wells that could be identified based on available information.

Proposed Findings of Fact Nos. 33 through 36 should be deleted for the reasons set out above and replaced with the applicable findings in Attachment A.

B. Conclusions of Law

Proposed Conclusion of Law Nos. 3, 7, 8, and 10 should be deleted, for the reasons discussed above. Proposed Conclusion of Law No. 5 does not accurately reflect the requirements of the rule section cited and should be replaced with the following:

Proposed wastewater treatment units to be located within the 100-year floodplain will not be approved for construction unless protective measures satisfactory to the Commission, such as levees or elevation of the treatment units, are included in the project design. 30 TAC § 317.1(b)(4)(E)(i).

The following Conclusion of Law should then be added as requested above:

To ensure that the facility as constructed is protected from a 100-year flood, Special Provision No. 8 of the draft permit should be revised as follows:

Prior to construction of the interim and final phase treatment facilities, the permittee shall submit to the TCEQ Wastewater Permitting Section (MC 148) [a ~~summary submittal letter in accordance with the requirements in 30 TAC Section 317.1. If requested by the Wastewater Permitting Section, the permittee shall submit~~] plans, specifications and a final engineering design report which comply with 30 TAC Chapter 317, Design Criteria for Sewerage Systems. The permittee shall clearly show how the treatment system will meet the permitted effluent limitations required on Page 2 of the permit and how the wastewater treatment

facilities and storage ponds will be protected from a 100-year flood as required by Special Provision Nos. 19 and 22.

Additional Conclusions of Law that should be included in the order are shown in Attachment A.

C. Ordering Provisions


The Commission should delete proposed Ordering Provision No. 1 and replace it with the following:

The application of the City of Weston for Permit No. WQ0014602001 is GRANTED, and the draft permit is issued as attached, which includes the revisions set out in this Order.

IV. CONCLUSION

Weston respectfully urges the Commission to find that Weston has met its burden of proof with respect to each of the five specific issues referred for hearing, revise the Administrative Law Judge's order as discussed above, and issue Permit No. WQ0014602001 with the revisions also discussed above.

Respectfully submitted,


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ATTORNEYS FOR THE CITY OF WESTON

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2007, a true and correct copy of the CITY OF WESTON'S EXCEPTIONS TO THE PROPOSAL FOR DECISION was sent by facsimile transmission and/or overnight delivery to the following:

The Honorable Sarah G. Ramos
Administrative Law Judge
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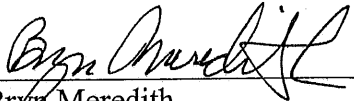
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Courtesy Copy by Mail:

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Bryn Meredith

ATTACHMENT A

FINDINGS OF FACT AND CONCLUSIONS OF LAW TO BE ADDED TO ORDER

Additional Findings of Fact

Add after Finding of Fact ("FOF") No. 2 in draft order:

- The application requested a new permit for facilities consisting of an activated sludge process plant using the membrane bioreactor technology and four storage ponds. Disposal of the treated domestic wastewater was proposed to be through surface irrigation at a daily average flow not to exceed 0.30 million gallons per day ("MGD") in the interim phase and not to exceed 0.60 MGD in the final phase.

Add after FOF No. 5 in draft order:

- The Executive Director, after completing the technical review of the application, recommended approval of a draft permit that would authorize the disposal of treated domestic wastewater via surface irrigation at a daily average flow not to exceed 0.30 MGD in the interim phase and not to exceed 0.35 MGD in the final phase.
- In the Response to Public Comment, the Executive Director recommended the following change to the draft permit in response to certain comments made by the public: Add Special Provision No. 22, requiring the protection of the proposed wastewater treatment facility from a 100-year flood.

Add after FOF No. 6 in draft order:

- The Commission referred the following disputed, relevant and material issues of fact to SOAH for hearing:
 - a. Whether the proposed facility is located in the 100-year floodplain, and if so, whether the draft permit contains adequate provisions to protect the facility from inundation by such a flood event;
 - b. Whether the draft permit contains adequate provisions to prevent nuisance odors from the facility;
 - c. Will the amount of treated wastewater disposed of by irrigation saturate the soil to create a health hazard, including during periods of heavy rain, freezing weather and ice storms;
 - d. Will the treated wastewater disposed of by irrigation seep into and adversely impact the shallow water table and the spring-fed ponds in the area, including during periods of heavy rain, freezing weather and ice storms; and

e. Whether [Applicant] has demonstrated sufficient need for the proposed facility.

Add after FOF No. 13 in draft order:

- The wastewater treatment plant will not be located in the 100-year floodplain as established by the Federal Emergency Management Agency, which is responsible for designating the 100-year floodplain in this area.

Add after FOF No. 16 as revised above:

- The draft permit requires Applicant to provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.
- The wastewater treatment facilities will be located wholly within a protective enclosed structure.
- The draft permit requires the storage ponds to be bermed or have other protective measures to prevent inundation and damage that may occur during a 100-year flood event.
- The draft permit requires wastewater treatment plant units to be located more than 150 feet from the nearest property line, creating a buffer zone for odor control.
- The wastewater treatment plant will be housed in a fully enclosed structure and will include odor control equipment to remove odors where untreated wastewater enters the plant for processing, resulting in additional odor control that exceeds TCEQ requirements.
- The application contains very conservative water balance calculations using the highest precipitation data for Collin County recorded in the last 50 years and the lowest evaporation rates recorded.
- The water balance calculations in the application meet or exceed TCEQ requirements.
- The draft permit limits the rate of application of treated effluent used for irrigation to 2.85 acre-feet per year irrigated in the interim phase and 3.32 acre-feet per acre irrigated in the final phase, which will prevent the soil from becoming saturated.
- The draft permit requires Applicant to provide equipment to determine application rates and maintain accurate records of the volume of effluent applied and to design and manage its irrigation procedures so as to prevent ponding of effluent and to prevent the occurrence of nuisance conditions in the area.
- The draft permit prohibits the application of effluent for irrigation during rainfall events or when the ground is frozen or saturated.

- The storage facilities have been sized so that storage for treated effluent and storm water is available at all times, even under the worst case scenario, precluding the need to irrigate with treated effluent to the point where the soil becomes saturated.

Add after FOF No. 32 as revised above:

- The water balance calculations and the resulting irrigation rates established by the draft permit will ensure that no treated effluent applied for irrigation will leave the irrigation site.
- The treated effluent used for irrigation will not seep into the water table or spring fed ponds because there is adequate storage, of storm water runoff and effluent, to allow for effluent application at rates that will be absorbed by the proposed vegetation and used in the natural evapotranspiration process. The crop proposed to be irrigated will use all of the effluent applied, the remainder will be stored, and none will be left to seep to the water table or off-site, even during periods of heavy rain, freezing weather, or ice storms.
- The draft permit requires Applicant to design and manage irrigation so as to prevent contamination of ground and surface waters and to provide tailwater control facilities as necessary to prevent the discharge of any wastewater from the irrigated land.
- The draft permit requires Applicant to line storage facilities using one of three methods to prevent seepage.
- The draft permit establishes effluent limitations more stringent than those required by TCEQ rules.
- The draft permit requires Applicant to maintain a 50-foot buffer from Honey Creek and its tributaries where no effluent shall be applied.
- The wastewater treatment plant and irrigation site are more than 150 feet from any private water well.
- Wastewater treatment service is needed to serve new development in the vicinity of Applicant and also to replace existing failed or inadequate septic systems.
- No other wastewater treatment system is located within three miles of Applicant's proposed facility.
- The closest wastewater treatment system is located six miles from Applicant's proposed facility, but no existing or proposed facility at any distance is capable of providing service.
- Applicant's compliance history is a 3.01, Average by Default.

- The expiration date in the draft permit should be revised to reflect a five-year term from the actual issuance date.

Additional Conclusions of Law

Add after Conclusion of Law ("COL") No. 2 in draft order:

- Applicant and TCEQ have satisfied all applicable public notice requirements.
- Applicant's permit application meets all requirements for Commission approval as set out in the Texas Water Code, the Texas Government Code, and the relevant requirements of the Commission's implementing regulations.

Add after 100-year floodplain COLs, revised as shown above:

- The draft permit contains adequate provisions to prevent nuisance odors from the facility. 30 TAC §§ 309.13(e), 317.4(a)(10).
- Under the terms of the draft permit, the amount of treated wastewater disposed of by irrigation will not saturate the soil to create a health hazard, including during periods of heavy rain, freezing weather and ice storms.

Add after COL No. 9 in draft order:

- A wastewater treatment plant unit or land where surface irrigation using wastewater effluent occurs must be located a minimum horizontal distance of 150 feet from a private water well. 30 TAC § 309.13(c)(1).
- Groundwater resources serving as sources or potential sources of domestic raw water supply will be protected by limiting the rate of application of treated effluent for irrigation. 30 TAC § 309.20(a)(4)(B).
- Applicant demonstrated that treated effluent disposed of by irrigation will not seep into and adversely impact the shallow water table or any spring-fed ponds in the area, including during periods of heavy rain, freezing weather and ice storms.
- It is the policy of the state to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state. Code § 26.003.
- In acting on a wastewater permit application, the Commission may consider need, including the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems. Code § 26.0282.
- Applicant has demonstrated an overwhelming need for the proposed facility, and there is no other existing or proposed system capable of providing service.

- Applicant's application should be granted, and Permit No. WQ0014602001 should be issued, with the expiration date revised to reflect a five-year term from the date of actual issuance.